

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 553 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----22,23,24,25,26,27,28,29,30

Versus

HEIRS OF DECD. KOLI BHANA VALJI -RAMABEN BHANABHAI & 10

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Appearance:

MR RC KAKKAD for Petitioners

MR HARESH N JOSHI for Respondent No. 1

SERVED for Respondent No. 9,10,11,12,13,14,15,16,17,18,19,20,21,22  
23,24,25,26,27,28,29,30

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 05/02/98

ORAL JUDGEMENT

Heard Learned Counsel for the parties. The appellants-plaintiffs who are claiming, through Nathubhai Bachubhai Valji, son of Valji Gova, interest in the property in question has filed suit for partition and has prayed for temporary injunction restraining defendants

from alienating the property in question and for maintaining status quo pending suit. The Trial Court has found that prima facie, the plaintiffs have failed to prove their possession or title to the property in question. For that conclusion, the Trial Court has found that the property was prima facie belonging to Valji Gova and was joint until 1970 when there was a settlement of rights between the descendants of said Valjibhai. For arriving at this conclusion, he has placed reliance upon the documents mark 18/9 and 18/6. However, he has expressed his doubts about genuineness of these two documents and observed that while the mark 18/9 the writing bears the signature of Nathu, the mark 18/6 bears the thumb impression of said Nathu which creates a doubt regarding the true status but kept aside that doubt by observing that this is a matter of evidence and in absence of strong evidence, their import cannot be denied.

2. One fails to understand when the learned Judge entertains doubt about the genuineness of the two documents one bearing the signature and another thumb impression of the same person, Yet on the basis of these very documents, he gives the benefit of doubt in favour of the defendants who relies on those documents. Every fact, like genuineness of documents at this stage depends on evidence that will ultimately be proved on record and documents Ex 18/9 and 18/6 are no exception. Question at this stage is primarily evaluating prima facie the acceptability or credibility of rival case. Finding the documents prima facie of dubious nature and yet to rely on them betrays injudicious approach of the lower court and vitiates the finding of the learned judge on the question of prima facie case against the plaintiff. This alone is sufficient to set aside the order under appeal. Apart from fact that the learned Judge reached the conclusion about family settlement in 1970 resulting in loss of plaintiff's right to claim the partition, no other factor has been relied upon by the Trial Court to reject the application Exh.8 for temporary injunction.

3. In the absence of any reliable evidence of partition of the property which is found to be joint. I am of the opinion that the plaintiffs have proved prima facie case pleaded by them in the suit for claiming partition of the suit properties. As it relates to partition of immovable properties which are in possession of different members of the family; If the new rights are allowed to be created during the pendency of the suit, it will cause irreparable injury to the interest of plaintiffs as well to those in possession in-as-much as

each party in a partition suit who claims right in the property is in the position of the plaintiff. The balance of convenience also warrants that during the pendency of the suit new rights or encumbrances are not created in respect of the property in question.

4. In this view of the matter, this appeal is allowed. The order under appeal is set aside. The application Exh.5. in the suit on behalf of the plaintiff is allowed. The defendants are directed to maintain status quo for the possession and title of the lands under dispute pending decision of the suit. There shall be no order as to costs of this appeal.

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